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U.S. DEPT. OF JUSTICE
ENV. & NAT. RES. DIV.
DENVER, CO
FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

LITTLESON, INC., a Delaware corporation;
MIDVALE CITY CORPORATION, a municipal
corporation and political subdivision of the State
of Utah; and UNION PACIFIC RAILROAD
COMPANY, a Delaware corporation,

Defendants.

COMPLAINT

Judge Dee Benson
DECK TYPE: Civil
DATE STAMP: 09/10/2004 @ 11:19:59
CASE NUMBER: 2:04CV00843 DB

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

1. This is an action brought by the United States pursuant to Sections 106, 107 and 113 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606, 9607 and 9613 for injunctive relief and the recovery of response costs incurred and to be incurred by the United States in connection with a facility known as the Midvale Slag Superfund Site, in Midvale, Utah (the "Site"). The United States also seeks a declaratory judgment, pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), that defendants shall be liable for future response costs that the United States may incur in connection with the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b).

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 42 U.S.C. § 9613(b), because the release or threatened release of hazardous substances that gives rise to these claims occurred in this district and because the Site is located in this district.

DEFENDANTS

4. Defendant Littleton, Inc. ("Littleton") is a closely-held S corporation organized under the laws of the State of Delaware, with its principal place of business in Salt Lake County, Utah.

Littleson is the current owner of portions of the Site.

5. Defendant Union Pacific Railroad Company ("Union Pacific") is a corporation organized under the laws of Delaware and doing business in this District. Union Pacific is the current owner and operator of certain portions of the Site.

6. Midvale City, Utah is a municipality organized pursuant to the laws of the State of Utah. Midvale City is a former owner and operator of a sewage treatment plant on a portion of the Site.

THE SITE

7. The Midvale Slag Superfund Site consists of approximately 446 acres located in Midvale, Utah. The Site is bounded on the west by the Jordan River, on the east by 700 West, on the north by 6400 South, and on the south by 7800 South.

8. EPA has divided the Site into two "Operable Units," designated OU 1 and OU 2. OU 1 comprises the northern portion of the Site and includes the Winchester Estates Mobile Home Park. OU 2 comprises the southern portion of the Site. A fence in line with 7200 South and just north of the smelter slag deposits defines the boundary between OU 1 and OU 2.

9. The Site is the location of former smelters that operated from the early 1900s until approximately 1958.

10. In 1964, Valley Materials, Inc., a corporate predecessor to Littleson, purchased a portion of the Site, after the cessation of smelting operations.

11. From 1965 until 1992, Valley Materials, Inc., conducted operations on the site to screen and sell slag, primarily for use as railroad ballast material.

EPA ACTIVITIES AT THE SITE

12. Beginning in March 1983 EPA undertook various studies at the Site to determine the level of contamination in the soils, sediments and waters at and near the Site, some of which are set forth below. EPA placed the Site on the National Priorities List in February 1991. The NPL is promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, and can be found at 40 C.F.R. Part 300, Appendix B.

13. In 1992, EPA conducted a preliminary investigation and, subsequently a Remedial Investigation/Feasibility Study ("RI/FS") at OU 2 of the Site. These studies were designed to assess the threats posed by the calcine, slag and smelter wastes that remained on Site.

14. On April 28, 1995, EPA issued a Record of Decision ("ROD") for OU 1 of the Site, which provided for the excavation of contaminated soils in the Winchester Estates residential development, placement of a soil cap over the undeveloped portion of the residential area, institutional controls to prevent future development that would interfere with the remedial action, and groundwater monitoring.

15. On October 29, 2002, EPA issued a ROD for OU 2 of the Site, which set forth EPA's selected remedial action for the Site. EPA's selected remedy calls for long term groundwater monitoring and the establishing of Alternate Concentration Limits, excavation of certain wastes for off-site disposal, construction of an appropriate cover over certain wastes and the regrading and covering of slag deposits.

16. In addition, EPA's ROD provided for a redevelopment option that could be performed in lieu of the selected remedial action. EPA determined that the redevelopment option

would provide protection to human health and the environment that was comparable to that achieved from the selected remedy.

17. The United States has incurred at least \$14.7 million in costs responding to releases and threats of releases of hazardous substances at the Site. These costs are not inconsistent with the National Contingency Plan ("NCP"), 40 C.F.R. Part 300, and were incurred for, inter alia, inspecting, evaluating, assessing, monitoring, sampling and analyzing the release or threat of release of hazardous substances at the Site, and for other response actions related to the Site.

FIRST CLAIM FOR RELIEF
(INJUNCTION)

18. Paragraphs 1 through 17 are realleged and incorporated herein by reference.

19. Defendants Littleton, Union Pacific and Midvale City are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. "Hazardous substances," within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) were contained in materials that were disposed of at the Site.

22. There has been a "release or threatened release," as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), of hazardous substances into the environment at the Site.

23. Defendants Littleton and Union Pacific are current owners and/or operators of portions of the Site within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1). Midvale City was the former owner and operator of a facility located on a portion of the Site, within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

24. The Assistant Regional Administrator of EPA Region 8, acting pursuant to his delegated authority, determined in the ROD that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of the release or threatened release of hazardous substances at the Site.

25. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the United States is entitled to such relief from the Defendants as may be necessary to abate the danger or threat to the public interest posed by the release or threatened release of hazardous substances at the Site.

SECOND CLAIM FOR RELIEF
(RESPONSE COSTS)

26. Paragraphs 1 through 25 are realleged and incorporated herein by reference.

27. The United States has incurred costs authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, and defined by Section 101(23) and (25) of CERCLA, 42 U.S.C. § 9601(23) and (25), as a result of the release or threat of release of hazardous substances from the Site.

28. The United States' actions at the Site were "response" actions as defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

29. The costs incurred by the United States in conducting the response actions were incurred in a manner not inconsistent with the National Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

30. The United States will continue to incur response costs in connection with the Site until the Site is cleaned up and all response costs are paid by responsible parties.

31. Defendants are liable to the United States for the payment of response costs incurred

by the United States as a result of the response actions taken at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, the United States of America requests that this Court enter a judgment against Defendants Littleton, Union Pacific and the City of Midvale as follows:

- A. Order the Defendants to perform the remedy at the Site selected in EPA's Records of Decision;
- B. Order the Defendants to pay all response costs incurred by the United States in response to the release and threat of release of hazardous substances at the Site;
- C. Enter a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), against Defendants on liability that will be binding on any subsequent action to recover further response costs or damages;
- D. Award Plaintiff its costs and disbursements in this action; and
- E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 9, 2004, I caused a copy of the foregoing **COMPLAINT, NOTICE OF LODGING OF CONSENT DECREE**, and **RD/RA CONSENT DECREE** (Appendices A through K of the Consent Decree are being mailed to the following by EPA's contractor, CDM Federal Programs Corporation, under separate cover) to be served, via United States Mail, postage pre-paid, upon the following:

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